FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.

CRIMINAL APPEAL NO. 541 OF 2003.

Christianus Aeros Mintodo. .. Appellant.
vs.
The State of Maharashtra. .. Respondent.

Office Notes,Office Memoranda of Coram, appearnaces,Courts's orders or directions and Registrar's orders.	:	Court's or Judge's orders

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Shri Santosh Deshpande for the appellants.
Shri D.P. Adsule, A.P.P. for the State.

CORAM: V.M.KANADE,J.
DATED: 7-3-2005.

P.C.:

1. Heard learned Counsel appearing for the appellant and the learned A.P.P. for the State.

2. The appellants are challenging the judgment and order passed by the Additional Sessions Judge, Greater Bombay. By the said judgment and order dated 25.2.2003, the trial Court was pleased to convict the appellants for offence punishable under section 307 read with section 120-B(1) r/w section 34 of the Indian Penal Code and sentenced them to suffer R.I. for 7 years and to pay a fine of Rs. 3,000/- each, in default of

payment of file, to suffer further R.I. for 2 months. Appellants were also convicted of the offence punishable under sections 353,188, 437 read with 34m, 438 r/w 34, 395 r/w 120-B(1) r/w 34, 465, 468, 471 r/w 120-B(1) 34 of the Indian Penal Code and were sentenced to suffer R.I. for various periods on each count and fine was also imposed on them of Rs. 5,000/- on each count. The total fine which was imposed on each of the accused comes to Rs. 28,000/- and in default of payment of fine, each accused is sentenced to suffer R.I. for 2 years and 7 months.

3. Learned Counsel appearing for the appellants submits that the appellants were arrested on 21.11.1999 and as of today, they have completed 5 years and 3 months and 14 days of sentence. He has further submitted that each of the accused was entitled to get 84 days of remission per year and 30 days per year for good conduct and out of the total sentence of 7 years, each accused is entitled to get remission of 1 year and 6 months if period of remission is added to the period of sentence which they have already undergone

which comes to 6 years, 9 months and 14 days. The appellants, therefore, have practically undergone entire sentence. Learned Counsel for the appellants submits that the appellants are unable to pay fine amount of Rs. 28,000/- which was imposed by the trial Court.

4. Learned Counsel appearing for the appellants submits that the appellants have good case on merits and on merits he would be in a position to establish that the prosecution has failed to prove its case beyond reasonable doubt. He submits that all the appellants are citizens of Indonesia. Out of the 15 appellants-accused, who were arrested, one has already expired during the pendency of the appeal. The learned Counsel submits that considering the facts and circumstances of the case, he would therefore, prefer to argue on the point of sentence as otherwise, appeal is not likely to be heard in the near future.

5. The prosecution case in brief is that on 22.10.1999 a Japanese vessel was proceeding towards Japan and the ship was

pirated by 10 unknown persons., The ship was carrying aluminium ingot and after some time crew of this ship was transferred to another ship and this ship proceeded in another direction. The prosecution case is that this ship along with persons, who had pirated the ship went from port to port and finally a fax message was received by the Indian Coast Guard, as a result of which this vessel was pursued and this ship was apprehended and was brought to Mumbai Port where part of aluminium ingots were recovered. No other contraband was found in the ship.

Charge was framed against the appellants.

6. The appellants had challenged the jurisdiction of Mumbai Court in taking cognizance of the case since the ship was seized near Goa and according to defence, Mumbai Court did not have jurisdiction to try and hear the present case. It was further submitted that there was discrepancy in the report which was submitted by Indian Coast Guard regarding exact place where the ship was seized. At one point of time, it was alleged that ship was seized at about 300 nautical

miles from indian coastal line, whereas on different occasion it was stated that it had captured about 40 nautical miles from Cochin. It was, therefore, submitted that there was material discrepancy regarding the exact place where the said ship was seized. It was further submitted that none of the personnel from Indian Coast Guard was injured whereas 3 accused were injured at the time when the ship was captured.

7. Learned Counsel for the appellants submitted that in view of these discrepancies, the fine which was imposed by the trial Court may be set aside.

8. Considering the peculiar facts and circumstances of the case, particularly, since no evidence has come on record to indicate that persons who were arrested were the same persons who had committed offence of piration in high sea. The Captain of the ship P.W.2 in his evidence has not been in a position to identify the accused in the test identification parade as also in the Court. It is also not clear as to where the ship was seized. If

ship had been seized near Goa, it was the duty of the coast guard to have taken the ship to the nearest port which is Goa. In that case, Goa Court alone will have jurisdiction to entertain and try the said case. Further, considering the discrepancy regarding the exact place also, there is serious doubt regarding the exact location where ship was seized. It is a matter of record that at one stage, it is claimed by the prosecution that ship was seized at about 300 nautical miles from indian coastal line. In view of this discrepancy, in my view, this is a fit case where fine which is imposed by the trial Court is set aside. Since the learned Counsel appearing for the appellant has made submissions only on the point of sentence, the order of conviction will have to be confirmed.

9. However, so far as sentence is concerned, the appellants have already undergone 6 years, 9 months and 14 days and only 3 months of total sentence has remained. Considering the fact that the appellants are citizens of Indonesia and have been in jail from 211.11.1999,

sentence is reduced from 7 years to the period which they have already undergone. The order of fine which is imposed by the trial Court on each appellant is set aside. Appeal is partly allowed. Appellants be released forthwith if not required in any other case. Criminal appeal is disposed of in the above terms.

10. Articles and valuables belonging to the appellants mentioned in the judgment of the trial Court at sr.Nos. 23 to 128 be returned to the appellants. On release of the appellants, 4 weeks time is granted to them so that they can be deported to their country after necessary formalities are completed.

11. Parties to act on authenticated copy of this order. Certified copy expedited.